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Evidence-based policy making and 'Better Regulation': The battleground for standardised packaging of tobacco



About this research

Previous research* by the University of Bath's Tobacco Control Research Group (TCRG) concluded that transnational tobacco companies (TTCs) advocated the introduction of 'Better Regulation', anticipating that it would make it harder for governments to enact public health policies. This research builds upon those conclusions, exploring how TTCs used the public consultation and impact assessment required by 'Better Regulation' to oppose standardised packaging of tobacco products in the UK.

Tobacco smoking kills one in two long-term users, and 207,000 children are estimated to take up smoking each year. Standardised packaging aims to reduce the impact of smoking on health by eliminating TTCs' last remaining marketing opportunities. Under the measure, all packs will be printed in a drab brown colour, without logos, brand imagery or promotional text. A large body of peer-reviewed research shows that this measure is likely to both reduce the appeal of cigarettes among young people and increase the effectiveness of health warnings, thereby contributing to reducing smoking rates.

The research examines TTCs' attempts to use 'Better Regulation' processes to prevent the introduction of standardised packaging in the UK. It documents the quality and relevance of evidence cited by four TTCs – British American Tobacco, Imperial Tobacco Group, Japan Tobacco International and Philip Morris International – in their submissions to a public consultation on standardised packaging held in the UK in 2012. It critically examines the techniques they use to misrepresent evidence supporting standardised packaging and the quality of their data on the illicit tobacco trade.

Research findings in context

Independent research into standardised packaging has consistently found that there is *strong evidence* that the measure will reduce the appeal of tobacco products and increase the prominence of health warnings, and that there is no indication that standardised packaging is easier to counterfeit (Moodie et al., 2012).

In their submissions to the 2012 consultation, TTCs contested these arguments and cited an alternative body of evidence, much of which was commissioned by them, to claim that standardised packaging would not have discernible health benefits, would boost the illicit trade in tobacco and would have a negative impact on the economy. The TCRG's research, which examined this body of TTC-cited evidence, demonstrates that tobacco companies' arguments against standardised packaging were unfounded, that their critiques of peer-reviewed public health evidence were highly misleading, and that their data and reports on the illicit trade in tobacco cannot be trusted.

Yet, a fourteen month hiatus in the policy process followed the consultation. During this time, the four TTCs attended meetings with Department of Health officials to provide additional evidence on impacts of the proposed policy and the Government announced a decision to 'wait and see' what evidence emerged from Australia, where a standardised packaging law had been introduced in 2012. Pressure from the House of Lords prompted a reopening of the policy debate and the Government commissioned an independent review of the evidence in November 2013. This review fully endorsed the public health benefits of standardised packaging, questioned the validity of industry arguments and evidence and maintained that legal enforcement is sufficient and effective in mitigating the illicit trade in tobacco in the UK (Chantler, 2014). A subsequent report from HMRC indicated there is no evidence to suggest standardised packaging would have a significant impact on the size of the illicit market (HMRC, 2014).

Key findings

- TTCs invested significant resources in commissioning and disseminating research to support their two main arguments against standardised packaging; that it would not work, and that it would have negative consequences for the economy and the illicit trade in tobacco products.
- This research was of significantly lower quality than research supporting the measure. For example, tobacco companies' arguments were not supported by any peer-reviewed journal articles about standardised packaging.
- In their submissions to the stakeholder consultation in 2012, tobacco companies:
 - o Relied heavily on their commissioned evidence and the opinions of third parties with links to the tobacco industry to support their position;
 - o Used techniques, such as misquoting, to encourage government and the public to question the quality of the evidence supporting standardised packaging;
 - o Failed to include evidence showing the central importance of packaging in marketing their products; evidence which is present in internal tobacco company documents made public via litigation; and
 - o Did not consistently and transparently disclose their links to the evidence they cited – for example, 91% of TTCs' links to evidence on illicit tobacco trade and economic impacts of standardised packaging were undisclosed.
- Data on the illicit tobacco trade commissioned by tobacco companies markedly exaggerated its scale in the UK, and suggested that use of illicit tobacco was increasing despite independent data showing it was in decline. This is important because TTCs' opposition to standardised packaging relied heavily on the argument that the policy would make tobacco products easier to counterfeit and would fuel the illicit trade.

The incentive for business to produce evidence to support their policy position and the battle over the quality of evidence in this policy debate would appear to be a consequence of the introduction of 'Better Regulation' processes. 'Better Regulation' aims to prioritise business interests in the policy making process and to reduce regulatory costs to business. This is operationalised via a requirement to conduct public consultations and impact assessments, which afford business an incentive to commission favourable evidence and a privileged opportunity to present this 'evidence', lobby policy makers and have that evidence heard. Through these processes, TTCs sought to prevent, or at least delay, tobacco packaging regulation. Their submissions to the public consultation in 2012 made explicit references to the requirements of 'Better Regulation', and leaked documents from Philip Morris International show that the company had identified evidence-based policy making and 'Better Regulation' processes as key tools and mechanisms for opposing standardised packaging.

Although standardised packaging legislation was eventually passed in March 2015, the slow pace of what became a three year policy process would suggest that the TTCs' strategy was successful in at least delaying a policy decision. This finding, combined with previous evidence that TTCs advocated the introduction of 'Better Regulation' in order to make it harder for governments to enact public health policies, and their strategic use of evidence-based policy making and 'Better Regulation' in their efforts to oppose standardised packaging, raises questions about the opportunities 'Better Regulation' processes give them to influence public health policy.

Implications for policy

The TCRG's research into standardised packaging shows that 'Better Regulation' processes intended to enhance evidence-based policy making may actually undermine it, enabling corporate interests to misrepresent evidence in order to create confusion, doubt and delay.

'Better Regulation' affords TTCs a formal opportunity to engage in dialogue with government. This opportunity runs in direct contradiction to the commitment made by the 180 states, including the UK, that are party to the Framework Convention on Tobacco Control, to "protect" public health policies from "commercial and other vested interests of the tobacco industry". 'Better Regulation' also adds legitimacy to TTCs' counter argument that they ought to be involved in decisions which affect them.

This research on standardised packaging highlights three ways to reduce the vulnerability of public health policy to diametrically opposed commercial interests:

- **Increase transparency** by making it a mandatory requirement to declare all relevant conflicts of interest in submissions to public consultations. This requirement should extend to the disclosure of any funding for individuals and organisations making submissions and of 'experts' and research mentioned or cited in submissions. Where corporations are found to have omitted such disclosures, governments should not be required to consider this evidence in their policy deliberations.
- **Increase governmental transparency** by publishing and implementing clear guidelines on how submissions to public consultations, and evidence cited within, should be managed by policy makers. For example, a process for classifying evidence according to subject matter, independence and peer-review status could be used to enable the prioritisation of good quality, policy-focused evidence, and the identification of evidence which should be received more sceptically.
- **Review methods and structures for obtaining data on the illicit tobacco trade** by exercising caution with regard to industry data and rejecting collaborations with industry to obtain data; by requiring industry reports on the illicit trade to describe methods transparently and be subject to independent peer-review before being made public; and by commissioning independent research into the scale of the illicit tobacco trade.

Methodology

The TCRG's research entailed analysis of TTCs' submissions to the public consultation, TTC-commissioned reports and TTC data cited in the media. The different studies variously employed quantitative content analysis, qualitative interpretive analysis and detailed methodological review. Where appropriate, iterative agreement of codes and multiple coders were used to ensure inter-coder reliability, and statistical analyses (Fisher's exact tests) were used to compare the quality of industry and independent research and data.

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More on this research:

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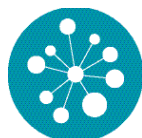
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